

## CURRENT LAND USE ISSUES

### I. CLUDMA

- A. The County Land Use, Development and Management Act (CLUDMA) is found in [Utah Code Title 17, Chapter 27a](#). Cities have a mirror copy that is applicable to them in Title 10, Chapter 9a.
- B. All County Development Codes are adopted under the permissions granted in CLUDMA and therefore must comply with CLUDMA.

### II. AMENDING CLUDMA

- A. Each year Counties (and cities) face challenges from the Property Rights Coalition (PRC) which is made up of realtors, builders, contractors, etc.
- B. We try to work with the League of Cities and Towns through the Land Use Task Force (LUTF) but find that sometimes a city's interest is contrary to ours (e.g. Annexations)
- C. The PRC and LUTF each meet with their own teams then come together to negotiate on the annual LUTF bill. However of late, the PRC seems to be flexing a considerable amount of muscle in the legislature.

### III CURRENT ISSUES BEING DISCUSSED

- A. **Development Agreements (DAs):** As a result of the [Wallingford v. Moab City](#) decision which again reiterated that contract zoning was illegal in Utah and land use regulations, including Development Agreements MUST go through the public hearing process required of all land use regulations.
  - 1. HB 409 tried to clarify by creating a definition Utah Code [§17-27a-103](#)
    - (a) "Development agreement" means a written agreement or amendment to a written agreement between a municipality and one or more parties that regulates or controls the use or development of a specific area of land.
    - (b) "Development agreement" does not include an improvement completion assurance.
  - 2. HB 409 also created [Utah Code §17-27a-528](#) which establishes the rules which allows for “administrative” DAs which is contrary to the purpose of a DA and is really just a contract which is illegal in Utah.
- B. **Accessory Dwelling Units (ADUs):** In an effort to get more rental housing units on the market and perhaps even affordable housing units, the PRC and some

legislators have suggested relaxing the rules at a state level. Jake Anderegg (Utah County) ran SB 221 in the 2021 session seeking to prohibit local jurisdictions from enacting or enforcing any regulation that would prohibit owner-occupied short term rentals. This bill did not pass, but HB 82 did pass which requires that all basement or attic apartments inside an owner-occupied primary dwelling (not above the garage) be permitted uses and prohibits counties from restricting or prohibiting them. Expect to see more on this.

- C. **Water Provider Review:** Hint: There is a drought and sufficient water is not available. See also HB 107.
- D. **Low Impact Development (LID)** The PRC is wanting to eliminate the power of local jurisdictions in many areas for what they call Low Impact Development.
  - 1. HB 409 (2021) created a statewide road standards for what they call “low impact development” in [Utah Code §17-27a-529](#). (Low Impact Development is defined in the Storm water permitting section of the [Utah Code §19-5-108.5](#))
  - 2. The PRC is seeking to pre-empt local regulations requiring any planning review for these projects and expect a bill in the 2022 session.
- E. **Building Permits:** HB 98 and HB 1003, review time, required documents, planning review, etc.
  - 1. Prohibition on new rules for 10 years: Within HB 409 were amendments to [Utah Code §17-27a-508](#) which states that a city or county cannot impose any new regulation on a building permit applicant if that applicant is building a single family home within an approved subdivision that was recorded within the prior 10 years! Changes to the state building, health, and fire codes are excepted. The LUTF is seeking to make changes to this.
  - 2. Libertas trying to reduce building permit turnaround to 24 hours
  - 3. Building Inspections
- F. **Boundary Line Adjustments:** 2021 the provisions of both CLUDMA and the Real Estate Act were amended to clarify that “Lots” are land which has been subdivided by a subdivision process and recorded plat. “Parcels” are unsubdivided lands (usually within the unincorporated county jurisdiction). It allows a process where two property owners may adjust the line between their parcels or lots in a simplified manner. It allows for the adjustment of only one line between contiguous real estate. Surveyors would like some changes so expect a bill in 2022.

- G. **Annexation and Incorporation:**
1. Counties must now “notice” the annexations (fees?)
  2. Cross County annexations
- H. **Gravel Pits:** Cease fire still in place, but . . .
- I. **Standards of Review:** Created “substantial evidence” standard and defined “Substantial evidence” means evidence that:
- (a) is beyond a scintilla; and
  - (b) a reasonable mind would accept as adequate to support a conclusion.
- J. **Expansion of Public Infrastructure Districts (PIDs):** PIDs are a recent creation (2019) and allow a developer to fund the infrastructure needed for their development by creating a new tax district similar to a special assessment area. PIDs are NOT special service districts, but they are governed by a separate board without any elected officials or oversight. Currently PIDs are created only to install private infrastructure.
1. The PRC has proposed that PIDs be used on an on-going basis to also maintain the private infrastructure.
  2. Additional proposals are to have the PIDs pay for amenities, transit, and other perks as well.
- K. **Inclusionary Zoning – Affordable Housing Commission:** The commission is currently considering how to define inclusionary zoning and how to regulate it at a state level (rather than allowing local jurisdictions to do it). The proposal from the Housing Coalition and PRC is that no one can require inclusionary zoning UNLESS that jurisdiction gives some sort of quid-pro-quo. The difficulty is that the asked for quid-pro-quo is currently at a ridiculous level. There WILL be a bill on this issue, and it will most likely come from this committee chaired by Senator Anderegg and Representative Waldrup.
- L. **Subdivisions and exclusions:** Utah law requires that all land which is being divided into parts go through a subdivision process. Subdivisions are a defined term in CLUDMA ([Utah Code §17-27a-103](#)) but included with that definitions are now 10 exceptions to the rule. These exceptions essentially say that even though a parcel of land is being divided, it is NOT a subdivision if..... For example, the subdivision by a metes and bounds description in a deed of a large parcel meant only for agricultural use, does not have to go through the subdivision process of the Utah Code and local land use regulations. During the 2021 General Session, a new exception was adopted at the request of the PRC

which states that “any other division of land authorized by law” is NOT a subdivision.

- M. **Conditional Use Permits (CUPs)**: These seem to be the most difficult for planning commissions to handle and as a result, the focus of the PRC. HB 409 (2021) added language to CLUDMA that required a CUP ordinance to have “objective” standards with which an applicant may comply. Prior amendments clarified that conditions or obligations cannot be imposed which have not been duly adopted in a land use regulation (ordinance).
- N. **Billboards**: There were 3 bills in the 2021 general session seeking to overturn local regulations on billboards and to require that all jurisdictions allow all electronic billboards. UAC and others were able to defeat these bills but they WILL be back.

### III. OTHER ISSUES

Uniform Easement Relocation Act – see attached draft bill

### IV. QUESTIONS.